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No. 82-484

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

WILLIAM A. ALBAUGH,

Petitioner,

v.

ESTELLE G. WOOD, ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Was the United States Court of Appeals for the Fourth Circuit correct in dismissing petitioner's claim that the District of Columbia is part of the State of Maryland on the ground that the claim is barred by the doctrine of *res judicata*?

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RESPONDENT'S BRIEF IN OPPOSITION

PRELIMINARY COMMENT

The Respondent, State of Maryland, respectfully requests that this Court deny the peititon for writ of certiorari, seeking review of the Fourth Circuit's opinion in this case.

OPINIONS BELOW

The United States District Court for the District of Maryland, in a Memorandum Opinion of January 29, 1982 (Latent Energy Storage Co. v. Wood, No. Y-81-3046), dismissed Petitioner's suit with prejudice on the ground the claim was barred by the doctrine of res judicata, and warned Petitioner that costs and attorneys' fees would be imposed against him if he persists in prosecuting the same claim. (Appendix C, Albaugh's Petition.) The United States Court of Appeals for the Fourth Circuit, in a per curiam opinion of April 22, 1982 (No. 82-1086), affirmed the decision of the district court and reiterated the warning of the District Court that costs and attorneys' fees would be imposed if the suit were brought again. (Appendix D, Albaugh's Petition).

The Memorandum Order of the United States District Court for the District of Maryland of December 26, 1979, dismissing Petitioner's complaint with prejudice, in a suit against the United States Government and other governmental units similar to the case at bar, is included as Appendix A to this brief. The Memorandum Order of the United

States District Court for the District of Columbia of December 17, 1981, dismissing Petitioner's claim with prejudice in a suit raising the same issue as the instant case, is included as Appendix B to this brief.

JURISDICTION

Petitioner has invoked the jurisdiction of this Court pursuant to 28 U.S.C. §1254 and United States Constitution, Art. IV, Sec. 2.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution:
Article I, Sec. 8, Cl. 17:

(The Congress shall have power) . . . to exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.

Article IV, Sec. 2:

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

STATEMENT OF THE CASE

Petitioner, William Albaugh, brought this suit on October 19, 1981, in the Circuit Court of Maryland for Prince George's County to challenge the legality of the 1801 cession of part of Maryland to the United States for the purpose of establishing the District of Columbia as the seat of the federal government. Upon petition of one of the defendants, the United States, the case was removed to the United States District Court for the District of Maryland. The parties to the suit were Petitioner, then a resident of the District of Columbia, and his wholly owned corporation, Latent Energy Storage Co., whose place of business is the District of Columbia. Defendants were the Supervisors of Elections of Prince George's County, the State of Maryland, the District of Columbia, and the United States.

Mr. Albaugh claimed that the cession of land for the establishment of the District of

Columbia was never authorized by an act of the Maryland Legislature, and that his constitutional rights were therefore impaired by the State of Maryland's refusal to allow him to vote in Maryland Congressional elections. He further alleged that he had been taxed without representation because he paid more taxes as a resident of the District of Columbia than he would have paid as a Maryland resident. Petitioner has subsequently moved to Maryland, thereby mooting the issues raised in the suit. (Albaugh's Petition, p. 3.) He has also agreed to remove his corporation, Latent Energy Storage Company, as party plaintiff to the suit, because the corporation was not represented by counsel.

In a Memorandum and Order of January 29, 1982, Judge Young of the District Court dismissed the case with prejudice on the grounds of res judicata. Petitioner filed an appeal in the United States Court of Appeals for the Fourth Circuit, which affirmed the decision of the district court on April 22, 1982.

Petitioner filed an identical case, Albaugh v. Chapman, Civil Action No. 81-2753, in the United States District Court for the District of Columbia. In a Memorandum Order

of December 17, 1982, Judge Green dismissed the case with prejudice. Petitioner's appeal to the United States Court of Appeals for the District of Columbia in Albaugh v. Chapman has been stayed pending the disposition of this case. As in the instant case, in Albaugh v. Chapman Petitioner claims that the illegal cession of land for establishment of the District of Columbia has resulted in erroneous census reports for Maryland, rendering invalid all subsequent Maryland elections. He further claims that, because of the illegality of the cession of land for the District of Columbia, he should be relieved of the obligation of paying taxes to the District of Columbia.

The lack of any legal basis for Petitioner's claim has been stated repeatedly by the courts, including this Court. A more detailed description of the long history of Petitioner's litigation of the cession of land for the District of Columbia can be found in the Memorandum and Order of Judge Kaufman appended to this brief. (Appendix A)

ARGUMENT

THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT WAS CORRECT IN DISMISSING PETITIONER'S CASE ON THE GROUND THAT THE CLAIM IS BARRED BY THE DOCTRINE OF RES JUDICATA.

Once again Petitioner seeks to bring the same suit against the same parties on issues identical in every way to those which have repeatedly been decided by this Court and the courts below in favor of Respondents.

The Court cannot examine the involved history of Petitioner's efforts to try the question now before it without concluding that the Court of Appeals for the Fourth Circuit was correct in affirming the ruling of the United States District Court for the District of Maryland that the numerous decisions adverse to Mr. Albaugh on the same issue barred relitigation of the claim.

A brief summary of the suits by means of which Mr. Albaugh has sought to lessen his own and his corporation's tax liability to the District of Columbia - the only real interest involved in this case - will suffice to show that there is no ground for granting his petition.

Mr. Albaugh filed an action similar to the instant case on June 9, 1964, against the Governor and the Secretary of the State of Maryland contesting the validity of the Maryland Senatorial primary election. He was denied relief on the merits by a three-judge district court in a per curiam opinion, Albaugh v. Tawes, 233 F.Supp 576 (D.Md. 1964). The District Court noted in its 1964 opinion that Mr. Albaugh had already raised the same issue several times before in cases in which the merits were not reached. This Court subsequently affirmed that judgment, per curiam, in Albaugh v. Tawes, 379 U.S. 27, reh. denied, 379 U.S. 940 (1964).

Petitioner raised issues similar to those in the case at bar in 1968 in Albaugh v. Agnew, Civil No. 19599 (D.Md. 1968), in which the court dismissed the case as "entirely without legal substance." Judge Kaufman's Memorandum and Order (Appendix A, p. 1.) In Albaugh v. Mandel, Civil No. 74-1282 (D.D.C. 1974), Mr. Albaugh instituted the same suit in the United States District Court for the District of Columbia, and the case was dismissed on the grounds of res judicata. The Court of Appeals of the District of Columbia affirmed this dismissal,

and this Court denied Mr. Albaugh's petition for writ of certiorari. Albaugh v. Mandel, 423 U.S. 835 (1975).

The suit was filed again in 1976, and again dismissed. Albaugh v. United States Government, Civil No. T-76-378 (D. Md. 1976). The United States Court of Appeals for the Fourth Circuit affirmed. No. 76-1549 (4th Cir. Dec. 23, 1976.)

The decision of the district court was correct and should be affirmed. In order for the doctrine of res judicata to be invoked, a valid judgment, usually in another action, between the same parties or their privies must have adjudged some matter with finality. 1B James Moore, Federal Practice, ¶0.409[1] (1982); Federated Dept. Stores, Inc. v. Moitie, 452 U.S. 394 (1981) on remand Brown v. Federated Dept. Stores, Inc., 653 F.2d 1266 (9th Cir. 1981); Montana v. United States, 440 U.S. 147, 153 (1979); Cromwell v. County of Sac, 94 U.S. 351, 352 (1877). It is clear from the history of this case outlined in Judge Kaufman's Memorandum, (Appendix A), that this case has been litigated to final judgment on several occasions. This is also not the first time the State of Maryland was a party. Albaugh v. United States

Government, Civ. No. K-78-2335 (D. Md. 1978). In several other cases, Albaugh v. Tawes, 233 F. Supp. 578 (D. Md. 1964), aff'd, 379 U.S. 27; Albaugh v. Mandel, et al., Civ. No. 74-1282, (D.D.C. 1974), and Albaugh v. Agnew, Civ. No. 19599 (D. Md. 1968), defendants included the Governor of Maryland as well as other State officials, who are "privies" of the State of Maryland in this case.

Even if the claim were not barred by the doctrine of res judicata, this petition for writ of certiorari should be denied because Petitioner's claim is meritless and has no legal basis. The legal theory on which Mr. Albaugh purports to rely is that if residents of the Federal enclave of National Institutes of Health are considered Maryland citizens for the purpose of voter registration, as was decided in Evans v. Cornman, 398 U.S. 419 (1970), it thereby follows that the cession of territory to the federal government for the establishment of the District of Columbia in 1801 was illegal, and that, as a consequence, all subsequent Maryland censuses, apportionments, and elections are invalid, and furthermore, that the District of Columbia has no power to tax its own residents.

The absurdity of these claims on their face is such as to merit no further comment. As the Court in Albaugh v. United States aptly noted:

> There is a real difference between residents of the District of Columbia and NIH residents. Congress has given certain voting rights to residents of the District; for additional rights, they and the plaintiff herein must look to Congress.

Appendix A, p. 3.

Even if the claim were not barred by the doctrine of res judicata, and even if the claim were not without legal basis, Mr. Albaugh's Petition should be denied on the grounds of mootness. As Mr. Albaugh points out on p. 3 of his petition, he moved his legal residence to Maryland early in 1981, thereby mooting his claim. Additionally, he has withdrawn his wholly owned corporation, Latent Energy Storage Company, as a party to the suit because the corporation is not represented by a lawyer. (Petitioner's Brief, p. 3.) Thus, there is no controversy for this Court's review.

In order for a case to be justiciable by an Article III Court, there must be a definite and concrete controversy, touching the legal relations of parties with adverse legal

interests. The controversy must be of such substance that it admits of specific relief through a decree of conclusive character. Aetna Life Insurance Co. v. Haworth, 300 U.S. 227, 240-241 (1937); Great Western Sugar Co. v. Nelson, 442 U.S. 92 (1979). As none of the reasons Mr. Albaugh gives for granting this petition meet these criteria, the petition should be denied.

CONCLUSION

The Petition for a Writ of Certiorari to the Supreme Court of the United States in the case of Albaugh v. Wood should be denied because this Court has already decided the issues presented in this case in affirming the judgment of the United States District Court for the District of Maryland in Albaugh v. Tawes, 379 U.S. 27 (1964), where the identical issues of law and fact were adjudicated in favor of the State of Maryland. In the case at bar, Petitioner has raised no new legal issues which could make the case appropriate for a rehearing on writ of certiorari. Petitioner has stated no additional facts, circumstances, or legal theories in his petition which would raise his case beyond the level of a groundless claim, which

he has repeatedly pursued despite the admonishments of Judge Young of the United States District Court for the District of Maryland and the United States Court of Appeals for the Fourth Circuit that a subsequent suit based on the same issue against the same parties would be considered vexatious and would be grounds for awarding appropriate costs and fees to Respondents.

Respectfully submitted,

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